

7/31/95

5:00 p.m. Item - RZ-94-P-064 - 1994 FUND III L.C.  
Providence District

On Wednesday, July 19, 1995, the Planning Commission voted unanimously (Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting) to recommend to the Board of Supervisors approval of RZ-94-P-064 and the conceptual development plan, subject to the proffers dated July 19, 1995, and the development conditions dated July 13, 1995.

The Commission also voted 6-1 (Commissioner Harsel opposed; Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting) to recommend to the Board of Supervisors modification of the minimum setback requirement for residential buildings from interstate highways, as shown on the Conceptual/Final Development Plan and subject to the execution of proffers consistent with those dated July 19, 1995.

The Commission voted unanimously (Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting) to recommend to the Board of Supervisors modification of the maximum length limitations specified in the Zoning Ordinance for private streets in a residential development, as shown on the CDP/FDP and subject to the execution of proffers consistent with those dated July 19, 1995.

The Commission voted 6-0-1 (Commissioner Harsel abstaining; Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting) to approve FDP-94-P-064, subject to Board approval of RZ-94-P-064 and the associated conceptual development plan, and subject to the execution of proffers consistent with those dated July 19, 1995, and the development conditions dated July 13, 1995.

The Commission further voted unanimously (Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting) to recommend to the Board of Supervisors that it promptly authorize the Zoning Administrator to prepare an amendment to the Zoning Ordinance that would address the problems created in the Tysons Corner area with the conversion of office or industrial zoned space to residential space under circumstances where the buffer to provide screening between the office or other use and the residential use is supposed to be on the residential property rather than the office or industrial property.

Planning Commission Meeting  
July 19, 1995  
Verbatim Excerpts

RZ-94-P-064 - 1994 FUND III L.C.  
FDP-94-P-064 - 1994 FUND III L.C.

Decisions Only During Commission Matters

Commissioner Hanlon: Mr. Chairman, we have a decision only in RZ-94-P-064, 1994 Fund III, which is affectionately known as the Flow General Site. The Commission may remember that we had a hearing just last week at which there was virtually no citizen comment. A Mr. Fleury from the West\*Group was here saying that he'd been involved in a productive conversation and they would therefore cede back his time. And probably you might have wondered what that discussion was all about and you discovered something about it with a letter from Mr. Fleury that I think should be in everybody's packet. There were a number of issues that needed to be resolved here and that gave rise to a number of, of changes in the proffers that, that we had last week. And I'd like to have at the outset to ask Mr. McDermott to come up and to direct everybody's attention to Proffer #6 which starts on page 4 and runs all the way from 4 to 7 and is extremely complicated and has a lot of things written into the margins. But the basic idea of it, I think, is, is not as complicated as the difficult language and I wondered if we could, we could just go through that. First of all, Mr. McDermott, it's my understanding that the applicant is prepared to agree to the proffers that were just distributed dated July 19th, 1995 with the handwritten emendations of the, of Proffer #6. Is that correct?

Francis A. McDermott, Esquire: That's correct. That's correct.

Commissioner Hanlon: It's my understanding that, let me just see if I can -- if I have this right and you should correct me. The issue here has to do with building Old Springhouse Road Extended which is the primary access to your development and it would extend, essentially, through a West\*Gate site. Isn't that right?

Mr. McDermott: That is correct.

Commissioner Hanlon: And there are several alternatives that are dealt with here; two basic alternatives. The first alternative and the preferred one is that this applicant will, up front, construct Old Springhouse Road Extended subject to an agreement that would be worked out with the West\*Group within 60 days of the date of rezoning. And if you're able to reach that agreement then you will, essentially, construct that site as near as possible to the plans that were already approved by West\*Group so that they could use your construction for the final construction to the extent possible. Is that the first alternative in a nutshell?

Mr. McDermott: It is the first alternative and, and it's -- the construction of Old Springhouse Road Extended is an -- one of four alternatives within the West\*Gate rezoning. With their option to build it in whatever priority they choose, we, just to clarify my first answer. This project does not require the construction of Old Springhouse Road, this, this current application. But it's, everybody's, it's the consensus of everyone that construction of Old Springhouse Road Extended is in the best interest of West\*Gate, of this project, and of all those people utilizing the 123 corridor and the relevant intersection. So, this is meant to be the incentive to get that done.

Commissioner Hanlon: Miss Abrahamson, would it be possible to put up something that, that shows where the road is so that, I mean, that's what we're going to focus on. We're not going to focus on the design of the -- And now, as you can see, if you can look on, on your, your screens, this site is set sort of back. Old Springhouse Road is -- comes in, if you can point to that. And what we're talking -- and on the other side of that is Old Meadow Drive which is where the Regency and several other condominium developments are. And the issue that we've been dealing with and that The Colonies of McLean raised has to do within -- in the interim when you develop this residential parcel, what's going to happen to the, to the intersection here? The interim would mean, what if you developed it, you didn't make any intersection improvements, and then until West\*Gate eventually, pursuant to its proffers, built Old Springhouse Road Extended which could take a fair amount of time. One way of dealing with the immediate impact on that intersection is simply to just do the ultimate buildout of Old Springhouse Road Extended right up front. And that really is what the applicant is attempting to work out with West\*Gate and if they do succeed in doing that, and much of the difficulty of this first proffer that makes it hard to understand, really has to do with setting forth the parameters of the agreement that they are now attempting to work out with West\*Gate. The essence of the matter is that they're going to pursue that for sixty days and if they have reached an agreement that meets the criteria here that has to do with the financial arrangements and so forth, then the applicant will build Old Springhouse Road Extended and will do it immediately so that there will be no immediate impact on, on the, on that intersection; that the final solution will be also the first solution. Am I basically right? Do I still have --

Mr. McDermott: That's absolutely correct. Might I suggest to staff, point to where Old Springhouse Road Extended will come out which is the next intersection to the north or Colshire Drive. That would help clarify that point.

Commissioner Hanlon: And that it -- and that is, is in accordance with the plan that was already approved at the time of the West\*Gate rezoning. Now, the next option is if, if the agreements are unable -- can't be reached within a 60-day period to do that, the applicant will then go to the second option which would involve constructing interim improvements that would be temporary

pending the ultimate construction of Old Springhouse Road Extended by West\*Gate pursuant to its proffers and in accordance to its timing. And these temporary improvements which Mr. McDermott will describe in just a minute, these temporary improvements are also designed to relieve the pressure on that intersection that comes from putting 600 housing units in, in a Flow General site. And it is, maybe Mr. McDermott could explain what those temporary improvements would consist of. That's Option B under -- or it comes in part B of the proffers at the bottom of page 5.

Mr. McDermott: Correct. And, that interim improvement is intended -- is a commitment to construct, as an alternative to our constructing Old Springhouse Road Extended, to construct a third lane from outbound, existing Old Springhouse Road which I'll ask Jeff to point to. And what that would do would permit a completely dedicated left-turn lane coming out of West\*Gate, Old Springhouse Road land bay. A left-turn and through lane so that someone in the middle lane could either take a left out of northbound 123 or go up Old Meadow Road in a dedicated right-turn lane. Today's configuration is merely two lanes and that is a right-turn and the second lane is a combination left and through. The effect of this interim improvement would be two-fold. Starting with the easier one to explain, the PM peak hour movement out of West\*Gate on Old Springhouse Road would be improved from an existing level of service E to a level of service D which, again, would will help everybody: Old Meadow Road, 123, traffic north bound and south bound, everybody.

Commissioner Hanlon: Let me just stop right here. At this point there has never been any disagreement that the -- of you going to a residential development here, even if you didn't add this. But certainly if you did, it would lead to a substantial improvement in the PM peak hours. Isn't that right?

Mr. McDermott: That's correct. And, and frankly, even as to the critical movements in the AM peak hour which are, specifically, the left-turn off north bound 123 into this Old Springhouse Road land bay of West\*Gate. That would be significantly improved as well. And that's been defined since at least January of this year by OT, the Office of Transportation, as the critical AM peak hour movement. And that will be multiples improved.

Commissioner Hanlon: Okay. Why don't you focus in on the -- what, what the effect of what you're proposing to do as an interim improvement if it gets to that. What, what effect that would have on the AM peak.

Mr. McDermott: On the AM peak, by our traffic study, the level of service would still be D, as in David, but what it would do would be to provide additional dedication for a pure left-turn movement and therefore, multiply the capacity of the intersection to take the residential trips out of this proposal and put them onto 123 quicker and therefore, clearly not take any green time from the movement coming out of Old Meadow Road onto either

direction on 123 and, and very possibly even creating some additional green time to be put either, for that movement out of Old Meadow Road, or one of the other movements.

Commissioner Hanlon: So, it's, it's fair to say that with that improvement you will not have any worsening of the situation on the south side on Old Meadow with the people from the condominium units coming out because they will have as much green time at least as they, as they have now. And there may even be a little room for some additional green time.

Mr. McDermott: That's correct. That's correct.

Commissioner Hanlon: And then, if you do that, you reached C where you still have an obligation to help support the ultimate construction of Old Springhouse Road Extended and, and C is essentially -- provides for you're paying a pro-rata share of that. Is that right?

Mr. McDermott: That's correct.

Commissioner Hanlon: Okay. I think that -- is there anything else you think you ought to draw your -- our attention to in these new proffers?

Mr. McDermott: No. No, not at -- that's the critical proffer change. Thank you.

Commissioner Hanlon: Okay. Now, you'd think this would all -- Thanks, Mr. McDermott. You'd think this would all be easy but actually it took quite a bit of time because --

Chairman Murphy: It certainly did.

Commissioner Hanlon: You should have done a real time, Mr. Murphy. We got to the point where Miss Rodeheaver said that the applicant's analysis was valid about the time that Mr. Lilly was talking to you and, and the rest was in the details. And --

Commissioner Harsel: You missed the squirrels popping out.

Commissioner Hanlon: I, I did miss the squirrels popping out of the trees. But, I, I, I had this instead. Mr. Chairman, this is an application that came to us with a staff recommendation for approval. And Mr. Fleury had a number of difficult problems which were originally raised and which he addresses in, in the letter he, he sent to us yesterday. But there were really two issues. One of which is overriding and one of which, I think, has to be talked about a little bit on the record here because it represents a, a, a glitch between the Comprehensive Plan for Tysons Corner and the Zoning Ordinance that, in my belief, the Board of Supervisors needs to address as soon as possible. The

overriding issue has to do with what we've just been talking about, the extension of Old Mill -- Old Springhouse Road Extended. This is an important aspect of the overall plan for dealing with the traffic circulation at 123, at the West\*Gate site. It is something that the West\*Gate had previously proffered to. But it's something that is triggered somewhere along the line as they build out and they were not required to do this at any time soon. This applicant is suddenly creating activity back there that wasn't necessarily contemplated at the time of the West\*Gate rezoning. And the issue really arises as to how to best deal with the access. Now the major point, and the point that needs to be remembered, is that by using the residential option in the Tysons Plan, and essentially reversing the direction of the trips on the whole, this application is much better than the existing I-4 zoning on the site. This application is better for traffic. It changes the direction of the flow and it, it is going to ultimately be a benefit for everyone. Nevertheless, on certain analyses, at least, there was a possibility that you could, pending the ultimate construction of Old Springhouse Road Extended, you could have had an adverse impact on either 123 or possibly on people trying to get out from The Colonies and The Regency and the other condominium projects that are located on Old Meadow. And that's what we've been trying to hammer out. And I think everyone agrees that the best solution is just to go to buildout Old Springhouse Road Extended right now and that's Option 1. And the applicant is trying to work that out with West\*Gate. They have been having productive conversations for at least the last week and it certainly is to be hoped that those reach a successful conclusion and we don't have to deal with interim improvements. If we do have to deal with interim improvements, however, the new proffer contains that option. And it allows for the building of an additional lane that makes sure that the traffic that is coming out from this residential project will not interfere with the traffic that is coming out from The Colonies. Now, The Colonies sent a letter to us last week which prompted much of this. They wanted a deferral in order to ensure that the things that were -- that their needs were being taken care of and Proffer #6 is designed to take care of those needs. And as I mentioned a moment ago, at around the time that Mr. Lilly was discussing the squirrels with you, we were discussing the validity of Mr. Callow's traffic estimates and at that point, I think it's fair to say, that, that Ms. Rodeheaver said that that analysis was a valid analysis. That the effect of the interim improvement would be just what Mr. Callow says and would relieve the problem for the people on the south side of 123. And Mr. Fleury had, had no dissent to make to that. And I have to accept that whenever those three outstanding people are able to agree, I'm certainly not going to dissent on my own. That, that's all, in my view at least, the transportation problem. Now Mr. Fleury may -- raised another major issue which I think we need to address. And, and for the rest of them, Mr. Guinaw's excellent job with the staff report, he's done a fine job on all of the remaining issues. The problem here is that the option, or the Plan language was designed to ensure that there would be an appropriate buffer that would be located on this property and not on the office property that West\*Gate has. The underlying theory is that if you went through this substitution, the

burden, the burden of providing the buffer to residents should rest on the people who are exercising the option and should not cause an additional requirement to be imposed upon the already zoned commercial land that surrounded it. Now it's staff's view that there is an adequate buffer. The problem is, is that West\*Group, when it comes in with the site plan, has got a Zoning Ordinance to deal with. The way the Plan is written, they shouldn't have to put transitional screening on their side because the adequacy of the buffer was expressly designed to put the buffer on this property, on the residential property. But there isn't any current provision of the Zoning Ordinance that allows for a waiver of the transitional screening requirement in this situation. If you go through all of the 15 subparagraphs, none of them quite fit. This is an issue that's going to come up over and over in Tysons Corner as people take already zoned commercial or industrial property and they exercise a residential option. In that case, almost uniquely in Fairfax County, it is the property that becomes residential that is supposed to bear that burden. That was the policy of the Plan and it should be the policy of the Zoning Ordinance and in order to do that it's going to be necessary to proceed promptly to authorize a Zoning Ordinance amendment to think this issue through and to provide a section of the Zoning Ordinance that will address the kinds of problems that can come up in this context. And that is something that in subsidiary motion, Mr. Chairman, I am going to ask that we advise the Board of Supervisors to do. All right, with those things being said, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ-94-P-064 AND THE CONCEPTUAL DEVELOPMENT PLAN, SUBJECT TO THE PROFFERS THAT ARE DATED JULY 19TH, 1995 THAT MR. MCDERMOTT HAS REAFFIRMED TONIGHT.

Commissioner Hunter: Second.

Chairman Murphy: Seconded by Mr. Hunter. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ-94-P-064, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? No? Opposed? Motion carries.

Commissioner Hanlon: Mr. Chairman, I move that the Planning Commission -- we're blinked out. That's the end.

Chairman Murphy: Not me.

Commissioner Harsel: No, you're still on.

Chairman Murphy: You're still on.

Mr. Kevin Guinaw: Mr. Hanlon?

Commissioner Hanlon: Yes.

Mr. Guinaw: The development conditions also go with the main motion.

Commissioner Hanlon: Well, that's right. I guess that's right. The, the, THE REZONING WOULD BE SUBJECT TO THE PROFFERS AND THE DEVELOPMENT PLANS ARE SUBJECT TO THE DEVELOPMENT CONDITIONS WHICH ARE DATED -- when, Mr. Guinaw?

Mr. Guinaw: July 13th.

Ms. Kristen Abrahamson: July 13th.

Commissioner Hanlon: JULY 13TH, 1995. If, if, if there's no objection, I'd like the motion to be amended with that.

Chairman Murphy: Fine. No problem.

Commissioner Hanlon: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS MODIFICATION OF THE MINIMUM SETBACK REQUIREMENT FOR RESIDENTIAL BUILDINGS FROM INTERSTATE HIGHWAYS, AS SHOWN IN THE CONCEPTUAL/FINAL DEVELOPMENT PLAN AND SUBJECT TO THE EXECUTION OF THE PROFFERS THAT ARE CONSISTENT WITH THOSE DATED JULY 19TH, 1995.

Commissioner Hunter: Second.

Chairman Murphy: Seconded by Mr. Hunter. Discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Harsel: No.

Chairman Murphy: Motion carries. Mrs. Harsel votes no.

Commissioner Harsel: I vote no on all setbacks. If they're by apartment buildings they're (unintelligible).

Commissioner Hanlon: All right. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS MODIFICATION OF THE MAXIMUM LENGTH LIMITATIONS SPECIFIED IN THE ZONING ORDINANCE FOR PRIVATE STREETS IN A RESIDENTIAL DEVELOPMENT AS SHOWN ON THE CDP/FDP AND SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE THAT WERE DISTRIBUTED TONIGHT DATED JULY 19TH, 1995.

Commissioner Hunter: Second.



Chairman Murphy: Seconded by Mr. Hunter. Is there discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hanlon: All right, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP-94-P-064, SUBJECT TO BOARD OF SUPERVISORS' APPROVAL OF RZ-94-P-064 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN, AND SUBJECT TO THE EXECUTION OF THE PROFFERS AND THE PROPOSED DEVELOPMENT CONDITIONS THAT WE DISCUSSED EARLIER THIS EVENING.

Commissioner Hunter: Second.

Chairman Murphy: Seconded by Mr. Hunter. Is there a discussion of that motion? All those in favor of the motion to approve FDP-94-P-064, subject to the Board of Supervisors' approval of the rezoning and all that other stuff, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Harsel: Abstain, Mr. Chairman. I can't vote for an FDP where I didn't vote for the --

Chairman Murphy: Mrs. Harsel abstains. Motion carries.

Commissioner Hall: All that stuff.

Chairman Murphy: All that stuff.

Commissioner Hanlon: All that stuff.

Commissioner Harsel: All that stuff. I, I can't vote on all that stuff.

Commissioner Hanlon: Well, let me, let me just try one more and see if I, if I can do it. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT PROMPTLY AUTHORIZE THE ZONING ADMINISTRATOR TO PREPARE AN AMENDMENT TO THE ZONING ORDINANCE THAT WOULD ADDRESS THE PROBLEMS THAT ARE CREATED IN THE TYSONS CORNER AREA WITH THE CONVERSION OF OFFICE OR INDUSTRIAL ZONED SPACE TO RESIDENTIAL SPACE UNDER CIRCUMSTANCES WHERE THE BUFFER TO PROVIDE SCREENING BETWEEN THE OFFICE OR OTHER USE AND THE RESIDENTIAL USE IS SUPPOSED TO BE ON THE RESIDENTIAL PROPERTY RATHER THAN THE OFFICE OR THE INDUSTRIAL PROPERTY. That work? Has everybody sort of --

Commissioner Harsel: Yes, I think that's a good idea.

Chairman Murphy: Seconded by Mrs. Harsel.

Commissioner Harsel: Oh no, I don't second the motion.

Commissioner Hunter: Second.

Commissioner Harsel: I'll vote for it but I won't second it.

Chairman Murphy: Seconded by Mr. Hunter. Is there a discussion of the motion? All those in favor of the motion as articulated brilliantly by Mr. Hanlon, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The first motion carried unanimously with Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting.)

(The second motion carried by a vote of 6-1 with Commissioner Harsel opposed; Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting.)

(The third motion carried unanimously with Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting.)

(The fourth motion carried by a vote of 6-0-1 with Commissioner Harsel abstaining; Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting.)

(The fifth motion carried unanimously with Commissioner Hartwell not present for the vote; Commissioners Byers, Koch, Palatiello, and Sell absent from the meeting.)

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